

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1579

Cir. Ct. No. 2011SC1371

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JAMES WOLF,

PLAINTIFF-APPELLANT,

V.

DAN SNELL,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Waupaca County:
PHILIP M. KIRK, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ James Wolf appeals a small claims judgment of the circuit court awarding Dan Snell \$2,000 for damages caused to a dock rented by Wolf from Snell. Wolf argues that Snell wrongfully withheld his security

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a)(2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

deposit for the rental of a summer residence owned by Snell and that he is entitled to damages in the amount of double his security deposit. For the reasons discussed below, I disagree and affirm the small claims court.

BACKGROUND

¶2 In 2011, Snell rented a vacation cottage located in Fremont, WI, to Wolf for the months of May, June, July, August and September. The rental agreement, which was not signed by both parties, provided that Wolf agreed to pay Snell monthly rental fees and provide a \$2,000 security deposit, and that Wolf agreed to be responsible for any damages. The parties agree that during the time period in which Wolf rented Snell's Fremont property, Wolf rented from Snell² additional dock sections, which Wolf added to the pier which came with the Fremont property. The receipt provided to Wolf provided that the dock sections were valued at \$695 each and that Wolf was "[r]esponsible for any [d]amage." It is undisputed that three of the six dock sections were damaged by Wolf—a sticker was permanently adhered to one section, a hole was made in another section by fireworks, and the third section sustained burn marks from fireworks.

¶3 In October 2011, Snell provided written notice to Wolf that the property had sustained damage in the amount of \$3,203.38 during Wolf's rental period, including \$2,189.25 in damage to the three sections of dock. Snell withheld the security deposit from the amount he claimed Wolf owed for damages and informed Wolf that Wolf owed an additional \$1,203.38 in damages.

² The receipt for the dock rental indicates that the dock sections were rented from Snell Marine Sales. The parties do not explain the connection between Dan Snell and Snell Marine Sales, but both state in their briefs on appeal that Wolf rented the docks from Dan Snell. I therefore assume that this is true.

¶4 Wolf filed a small claims action against Snell, alleging Snell wrongfully withheld his \$2,000 deposit. Snell counterclaimed, alleging that Wolf owed him an additional \$1,203.38 for damages caused to the property, including damage to furnishings, a lawn mower, and a screen door. The matter proceeded to a trial before the small claims court. The small claims court ruled that the parties did not have two valid written contracts—one for the rental of the Fremont property and one for the docks, but instead a contract for the “enjoyment of [the Fremont property] with dock access,” which was confirmed “by [the] actions of the parties.” The court observed that both parties had failed to sign the rental agreement for the Fremont property and that Wolf had testified at trial that he expected the damage he caused to the dock to be taken out of his security deposit, which the court stated was inconsistent with Wolf’s claim that there were two separate contracts. The court found that Wolf admitted to damaging three sections of dock, that those sections had been damaged beyond repair, and that Wolf was responsible for their cost, which the court ruled was \$2,085. The court ruled that the \$2,000 security deposit was sufficient to cover Wolf’s liability to Snell for damages caused to the dock and that Snell’s withholding of that deposit was reasonable. Thereafter, the court entered a judgment dismissing Wolf’s complaint and awarded Snell the “security deposit of \$2,000.00 as damages.” Wolf appeals.

DISCUSSION

¶5 Wolf challenges the small claims court’s finding that Snell did not wrongfully withhold his \$2,000 deposit, in violation of WIS. ADMIN. CODE § ATPC 134.06 (Nov. 2006). Wolf does not dispute that he damaged the dock and that he is responsible for the cost of that damage. Rather, he disputes the means by which Snell could recover from him the amount of damages. Wolf argues that the circuit court erred in determining that Snell could withhold from the security

deposit he provided as part of his rental of the Fremont property the \$2,085 in damages he caused to the docks he later rented from Snell. Wolf argues that the parties entered into two valid written agreements—one for the rental of the Fremont property, which required the security deposit, and a separate agreement for the rental of additional dock sections, which did not call for a security deposit and did not reference the agreement for the Fremont property. According to Wolf, Snell must have returned Wolf’s security deposit under the Fremont property rental agreement and separately sought under the agreement for the dock rental the same amount from Wolf for the damage he caused to the dock. He claims that because Snell did not, but instead retained the security deposit, he is entitled to double the amount of the security deposit, or \$4,000, under WIS. STAT. § 100.20(5), which sets forth the remedy for a wrongfully retained security deposit. *See Baierl v. McTaggart*, 2001 WI 107, ¶7, 245 Wis. 2d 632, 629 N.W.2d 277.³

¶6 Wolf is attempting to play fast and loose with Snell. He admits that he caused damage to the dock and that he is responsible for the cost of that damage, and he concedes that he admitted at trial that it was his expectation that he would be charged out of his security deposit for the damage to the dock. Yet, he claimed before the small claims court and claims now before this court that Snell was wrong to have withheld the amount of dock damages from his security deposit.

³ WISCONSIN STAT. § 100.20(5) provides: “Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney’s fee.

¶7 That being said, I assume without deciding, that Wolf is correct that the small claims court erred in determining that the parties did not enter into two separate, valid agreements, and that Snell's withholding from the security deposit the amount of the damage caused to the docks was not wrongful. I nevertheless affirm the court's judgment.

¶8 This court has stated that when a landlord retains a security deposit and complies with the notification requirement by providing the tenant with a written statement accounting for any amount withheld from the security deposit, a later determination that the landlord has wrongfully withheld a tenant's security deposit "will result in a doubling of only that pecuniary loss which remains after an offset for the landlord's actual damages has been included." *Pierce v. Norwick*, 202 Wis. 2d 587, 595-96, 550 N.W.2d 451 (Ct. App. 1996). Snell provided Wolf with an accounting of the amounts withheld from the security deposit. Accordingly, Wolf is entitled to only "that pecuniary loss which remains after an offset" for Snell's actual damages, which the circuit court found was \$2,000. *See id.*

¶9 Wolf argues that the record does not support the circuit court's finding that dock sections sustained damages in the amount of \$2,000. In small claims actions, a circuit court's factual findings will not be set aside unless clearly erroneous. WIS. STAT. § 805.17(2). "[A] finding of fact is clearly erroneous when 'it is against the great weight and clear preponderance of the evidence.'" *Phelps v. Physicians Ins. Co. of Wis., Inc.*, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615 (quoted source omitted).

¶10 The circuit court found that the docks were "damaged beyond repair" and that each dock had a value of \$695, which was the amount specified on

Wolf's receipt for the docks and of which Wolf was aware of when he took possession of the docks, for a total value of "about [\$]2000 and some odd dollars." Wolf argues that the court's finding is clearly erroneous because the court's finding is based upon Snell's "opinion of the value and an unauthenticated invoice." However, as pointed out by Snell, the present value of personal property may be established by the non-expert opinion of its owner. *Tribble v. Tower Ins. Co.*, 43 Wis. 2d 172, 187, 168 N.W.2d 148 (1969).

¶11 Snell testified at trial that he has been in the business of buying and selling docks for forty years and that the replacement value of the docks was \$695. Snell's estimate of the value of the docks, along with the receipt provided to Wolf upon his taking possession of the docks, is sufficient to sustain the small claims court's valuation.⁴

¶12 Having determined that the small claims court's finding that Wolf caused damage in the amount of \$2,000, I now turn to the question of whether Wolf suffered any pecuniary loss from Snell's wrongful withholding of Wolf's security deposit. When Wolf's \$2,000 security deposit is offset against Snell's damages, which the small claims court found amounted to \$2,085, Wolf has suffered no pecuniary loss. Accordingly, I conclude that the circuit court did not err in dismissing Wolf's claim for damages and awarding Snell damages in the amount of \$2,000.

⁴ To the extent that Wolf raises other arguments that I do not address, including, but not limited to, his claim that the small claims court's valuation failed to take into account the salvage value of the docks, I do not address them because I have determined they lack merit or are not sufficiently developed and supported by legal authority. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to address inadequately developed arguments and arguments unsupported by legal authority).

¶13 Pursuant to WIS. STAT. § 809.25(3), Snell has moved this court for an award of attorney fees against Wolf for filing a frivolous appeal. Wolf's appeal challenged both the small claims court's legal determination pertaining to the parties' contractual relationship and the court's findings of fact. Wolf's appeal was not completely void of arguable merit, accordingly, I deny Snell's request.

¶14 For the foregoing reasons, I affirm the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

